

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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FREDERICK MARC COOLEY,

Plaintiff,

v.

J. MARSHAL., et al.,

Defendants.

Case No. 2:09-cv-00559-MMD-GWF

ORDER

Before the Court is Plaintiff's Motion for Sanctions for the LVMPD and City Defendant's Failure to Comply with the Court's Order to Prepare Joint Pretrial Order. (Dkt. no. 141.) The Court had ordered for the proposed joint pretrial order ("PJPO") to be filed by May 24, 2013. However, to date, the parties have not been able to reach agreement on a PJPO and only Defendants have complied with the Court's December 4, 2013, Order to file a separate proposed pretrial order if no agreement is reached on a PJPO by December 9, 2013. While the parties have been dilatory in submission of the PJPO, which is not a difficult task, the Court does not find that Defendants' conduct amounts to bad faith. Plaintiff's Motion is therefore denied.

On March 20, 2013, the Court issued an Order denying City Defendants' Motion to Dismiss for Failure to Comply with Order Regarding Motion for Settlement Conference ("Motion to Dismiss"). (Dkt. no. 134.) Defendants' Motion to Dismiss sought dismissal based on Plaintiff's apparent failure to respond to various Court orders regarding his discovery obligations. On April 26, 2013, the Court issued an order

1 establishing May 24, 2013 as the deadline for the parties to file the PJPO. (Dkt. no.
2 135.) On May 8, 2013, City Defendants moved to amend the discovery plan and
3 scheduling order, seeking to extend the deadlines for completing discovery, filing
4 dispositive motion and filing the joint pretrial order. (Dkt. no. 136.) On June 6, 2013,
5 the Court denied City Defendants' motion, noting that City Defendants filed their Motion
6 to Dismiss one day before the discovery cutoff, made no efforts to secure an extension
7 during the eight (8) months that the Motion to Dismiss was pending and waited nearly
8 two months after the denial of the Motion to Dismiss before filing their motion seeking to
9 extend the deadlines. (Dkt. no. 140.)


10 Plaintiff asserts that he has made numerous attempts to engage Defendants'
11 counsel to discuss the preparation of the PJPO both before and after the Court
12 established May 24, 2013 deadline. Plaintiff further asserts that Defendants' counsel
13 have essentially refused to confer. Specifically, they assert that LVMPD's counsel had
14 scheduling conflicts and then deferred to City Defendants' counsel, who refused to
15 confer on the basis that City Defendants planned to seek an extension of the deadlines
16 in the operative scheduling order. Plaintiff first reached out to Defendants' counsel in an
17 April 8, 2013, email and again in a May 1, 2013, email. While City Defendants' counsel
18 took the position that his clients planned to seek an extension as early as April 8, 2013,
19 City Defendants did not file the motion for extension until a month later, on May 8, 2013.
20 After the Court denied City Defendants' motion for extension, Plaintiff sent another
21 email on June 12, 2013, to request a conference to discuss the joint pretrial order. On
22 June 13, 2013, City Defendant's counsel responded that they should wait for LVMPD's
23 counsel to return to the office and that "as mentioned before, the City plans to file a
24 dispositive motion." (Dkt. no. 141, Ex. L.) Plaintiff argues that City Defendant's counsel
25 filed frivolous motions to delay submission of the PJPO while LVMPD's counsel simply
26 acquiesced and contributed to the delay.

27 Plaintiff seeks sanctions under Local Rules IA 4-1 and 16.1-21. LR IA 4-1
28 provides that the Court may impose sanctions on an attorney or a party appearing pro

1 se who fails to comply with the Court's rules or orders without just cause. LR 16.1-21
2 requires counsel to make a good faith effort to participate in the meet and confer
3 process. The Court agreed with LVMPD's counsel that he did not decline to confer with
4 Plaintiff. As for City Defendants' counsel, the Court does not find that City Defendants
5 lacked just cause or acted in bad faith in seeking to defer discussion of the PJPO while
6 they sought an extension of the deadlines in the scheduling order.

7 It is ordered that Plaintiff's Motion for Sanctions for the LVMPD and City
8 Defendant's Failure to Comply with the Court's Order to Prepare Joint Pretrial Order
9 (dkt. no. 141) is denied.

10 DATED THIS 23rd day of December 2013.

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13 MIRANDA M. DU
14 UNITED STATES DISTRICT JUDGE
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